

JOHN F. HUGHES (SBN 111638)  
PETER J. TURCOTTE (SBN 168387)

**GORDON & REES LLP**  
275 Battery Street, 20<sup>th</sup> Floor  
San Francisco, CA 94111  
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Facsimile: (415) 986.8054  
jhughes@gordonrees.com  
pturcotte@gordonrees.com

Attorneys for Defendant and Counterclaimant  
And Third-Party Plaintiff  
LAPMASTER INTERNATIONAL LLC

**UNITED STATES DISTRICT COURT**

**NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION**

MASON AND DIXON INTERMODAL, INC.,  
Plaintiff,

v.

LAPMASTER INTERNATIONAL LLC and  
HARTFORD INSURANCE CO.  
Defendants.

LAPMASTER INTERNATIONAL, LLC,  
Counterclaimant,

v.

MASON AND DIXON INTERMODAL, INC.  
Counterclaimant.

HARTFORD FIRE INSURANCE COMPANY,  
individually and as subrogee of Lapmaster  
International, LLC.,  
Third-Party Plaintiff,

v.

ITG TRANSPORTATION SERVICES, INC.;  
WORLD EXPRESS SHIPPING,  
TRANSPORTATION AND FORWARDING  
SERVICES, INC. d/b/a/ W.E.S.T.  
FORWARDING SERVICES; DOES 1 through X,  
inclusive,

Third-Party Defendants.

AND RELATED CROSS-ACTIONS.

Case No. CV-08-1232-VRW

**DECLARATION OF PETER J.  
TURCOTTE IN SUPPORT OF  
LAPMASTER INTERNATIONAL  
LLC's OPPOSITION TO W.E.S.T.  
FORWARDING SERVICES' MOTION  
TO DISMISS OR IN THE  
ALTERNATIVE FOR SUMMARY  
JUDGMENT, AND TO ITS  
TRANSPORTATION SERVICES,  
INC.'S JOINDER IN SAME**

***Accompanying Document:***  
**Memorandum of Points and Authorities**

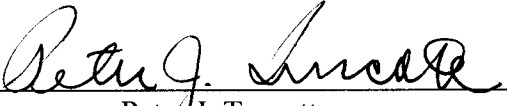
*(Assigned to the Honorable Vaughn R.  
Walker)*

Date: September 11, 2008  
Time: 2:30 pm  
Dept.: 6

1 I am an attorney at law duly licensed to practice in the State of California and am an  
2 associate with the law firm of Gordon & Rees LLP, attorneys of record for defendant  
3 LAPMASTER INTERNATIONAL LLC. I have personal knowledge of the matters set forth  
4 herein and could and would competently testify to them if called as a witness.

5 1. Attached hereto as **Exhibit A** is a true and correct copy of e-mail correspondence  
6 among counsel meeting and conferring on a discovery plan in the above-referenced matter, dated  
7 August 18, 2008. It was forwarded to me by counsel in the course of handling this litigation.

8  
9 I declare under penalty of perjury that the foregoing is true and correct. Executed on  
10 August 21, 2008 at San Francisco, California.

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13 Peter J. Turcotte  
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**EXHIBIT A**  
**TO THE DECLARATION OF PETER J. TURCOTTE IN SUPPORT OF**  
**LAPMASTER INTERNATIONAL LLC'S OPPOSITION TO W.E.S.T.**  
**FORWARDING SERVICES' MOTION TO DISMISS OR IN THE**  
**ALTERNATIVE FOR SUMMARY JUDGMENT, AND TO ITG**  
**TRANSPORTATION SERVICES, INC.'S JOINDER IN SAME**

Re: *Mason and Dixon Intermodal, Inc. v. Lapmaster International LLC*  
United State District Court No. CV-08-01232-VRW

**Peter Turcotte**

---

**From:** John Hughes  
**Sent:** Wednesday, August 20, 2008 3:37 PM  
**To:** Peter Turcotte  
**Subject:** FW: Mason & Dixon Intermodal, Inc. v. Lapmaster International, LLC and Hartford Fire Insurance Co.

---

**From:** Jeffrey Cohen [mailto:JCohen@freightlaw.net]  
**Sent:** Monday, August 18, 2008 2:50 PM  
**To:** John Hughes; EJoffe@strtrade.com; Samantha Oryall; CBrennan@blwlawfirm.com; mdaley@rallaw.com  
**Cc:** las@llcllp.com; eshibles@strtrade.com; adonnelly@blwlawfirm.com; Andrea Bean  
**Subject:** RE: Mason & Dixon Intermodal, Inc. v. Lapmaster International, LLC and Hartford Fire Insurance Co.

Counsel:

MDII additions can be found at the bottom of this e-mail.

Jeff

**Proposed Discovery Plan (Lapmaster/Hartford)**

1. Take the deposition of the PMK for WEST on the following issues: (a) the arrangements for the transportation of the goods from Japan to Oakland; (b) the arrangements for the transportation of the goods from Oakland to Fremont; (c) all documents pertaining to (a) and (b); all communications with Lapmaster concerning this transaction.
2. Take the deposition of the PMK for ITG on the following issues: (a) the arrangements for the transportation of the goods from Oakland to Fremont; (b) all documents pertaining to (a); (c) all communications between ITG and WEST concerning this transaction; (d) all communications between ITG and Mason Dixon concerning this transaction.
3. Take the deposition of the PMK for Mason Dixon on the following issues: (a) all communications with ITG re the transportation of the goods from Oakland to Fremont; (b) the size, dimensions, and transportation requirements for the goods being delivered from Oakland to Fremont; (c) the relationship, if any, between Mason Dixon and the shippers/shipping company responsible for transporting the goods from Japan to Oakland.
4. Take the depositions of the Mason Dixon drivers on the following issues: (a) information provided at dispatch, including name of dispatcher, what told, and what documentation provided; (b) what steps taken to ensure that the load was properly and safely transported; and (c) what happened to cause the two losses.

**Proposed Discovery Plan - Additions (WEST)**

For WEST please add the following:

8/20/2008

Deposition of Lapmaster on the following issues: (a) Facts supporting negligent interference claim ((Fifth Cause of Action) (b) replacement of damaged equipment (9) all damages. Prior to the deposition we require all documents pertaining to these issues.

Deposition of Hartford on the following issues: Payments made to Lapmaster and Hartford's measure of damages. Prior to the deposition we require all documents pertaining to these issues.

### **Proposed Discovery Plan - Additions (MDII)**

For MDII please add:

Additional topics for each of the 30(b)(6) witnesses for WEST, ITG, Lapmaster and Hartford (since the same topics are listed for each representative numbers 3,4 and 5 should be read to exclude the name of the party actually testifying in the list (i.e. WEST rep regarding agreements with WEST) :

- 1) contracts or agreements, pertaining to the transportation of the Cargo.
- 2) Any waybill, combined transport document, combined transport bill of lading, master bill of lading, bill of lading, booking notes or terms of transportation (and the reverse side of any relevant document) pertaining to the transportation of the Cargo.
- 3) All communications relating to the transportation of the Cargo internally, or with WEST, Nippon Express, MDII, Lapmaster International, LLC , Hartford Insurance Co., Hamai Co., Ltd., Hayward Quartz Technology, Inc or ITG Transportation, including but not limited to communications related to rate, terms of transport, limits of liability and contracts or agreements of any form.
- 4) Any agreement in any form with respect to the transportation of the Cargo with WEST, Nippon Express, MDII, Lapmaster International, LLC , Hartford Insurance Co., Hamai Co., Ltd., Hayward Quartz Technology, Inc MDII or ITG Transportation including but not limited to terms of transport, limits of liability and contracts or agreements of any form.
- 5) Past course of dealing with Nippon Express, MDII, Lapmaster International, LLC, Hartford Insurance Co., Hamai Co., Ltd., Hayward Quartz Technology, Inc or ITG Transportation including but not limited to communications related to price negotiation, terms of transport, limits of liability and contracts or agreements of any form.
- 6) Any claim file related to the Cargo.
- 7) Mitigation of damages.
- 8) The condition of the Cargo at the time it was shipped from the facility of Hamai Co., Ltd. in Tokyo, Japan; condition of the Cargo at the time it was placed aboard the Cosco Hong Kong in Yokohama, Japan; condition of the Cargo upon arrival at the Port of Oakland, California; condition of the Cargo upon arrival in Fremont, California.
- 9) Insurance policies that may provide coverage for damage to the Cargo.

- 10) The role of WEST, Nippon Express, MDII, Lapmaster International, LLC , Hartford Insurance Co., Hamai Co., Ltd., Hayward Quartz Technology, Inc MDII or ITG Transportation, and identification of all persons with knowledge of the answer to this interrogatory.
- 11) Payments by or to WEST, Nippon Express, MDII, Lapmaster International, LLC , Hartford Insurance Co., Hamai Co., Ltd., Hayward Quartz Technology, Inc MDII or ITG Transportation in connection with the Cargo or any damages to the Cargo.
- 12) Documents pertaining to the value of the Cargo.
- 13) Documents pertaining to any damage sustained by the Cargo.
- 14) Documents pertaining to any equipment, goods or products that Hayward Quartz Technology, Inc. acquired in place of the Cargo, including but not limited to, the value of the equipment, goods or products.
- 15) ITG Procedures and documentation with respect to issuing rate quotations, ocean import quotes to shippers and the issuance of the rate quotation to WEST with respect to the cargo in this matter.
- 16) WEST terms and conditions and how they are conveyed to WEST customers
- 17) ITG preparation of import dispatches generally and preparation of the import dispatch for this freight

Based upon the testimony elicited at the depositions of the parties' corporate representatives, MDII may seek depositions of certain individuals and/or non party witnesses.

MDII also intends to serve document requests and interrogatories regarding the topics identified above. Answers, responses and responsive documents would be required in advance of any depositions.

Jeffrey D. Cohen  
Keenan Cohen & Howard PC  
One Pitcairn Place  
Suite 2400  
165 Township Line Road  
Jenkintown, PA 19046  
{Direct} 215-609-1104  
{Fax} 215-609-1117  
jcohen@freightlaw.net

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**From:** John Hughes [mailto:JHughes@gordonrees.com]  
**Sent:** Monday, August 18, 2008 3:39 PM

8/20/2008

**To:** EJoffe@strtrade.com; Samantha Oryall; CBrennan@blwlawfirm.com; Jeffrey Cohen; mdaley@rallaw.com

**Cc:** las@llcllp.com; eshibles@strtrade.com; adonnelly@blwlawfirm.com; Andrea Bean

**Subject:** Re: Mason & Dixon Intermodal, Inc. v. Lapmaster International, LLC and Hartford Fire Insurance Co.

Let's try again at 3 pm today.

The number is 888/435-4283.

---

**From:** John Hughes

**To:** 'EJoffe@strtrade.com' ; Samantha Oryall; 'CBrennan@blwlawfirm.com' ; 'JCohen@freightlaw.net' ; 'mdaley@rallaw.com'

**Cc:** 'las@llcllp.com' ; 'eshibles@strtrade.com' ; 'adonnelly@blwlawfirm.com' ; Andrea Bean

**Sent:** Mon Aug 18 12:14:39 2008

**Subject:** Re: Mason & Dixon Intermodal, Inc. v. Lapmaster International, LLC and Hartford Fire Insurance Co.

Andrea, could you please set up a conf call with all these folks for 3 pm today?

The number Samantha gave us for this morning did not work.

Thanks.

John

---

**From:** Edward Joffe

**To:** John Hughes; Samantha Oryall; CBrennan@blwlawfirm.com ; JCohen@freightlaw.net ; mdaley@rallaw.com

**Cc:** las@llcllp.com ; Elise Shibles ; adonnelly@blwlawfirm.com

**Sent:** Mon Aug 18 10:06:36 2008

**Subject:** RE: Mason & Dixon Intermodal, Inc. v. Lapmaster International, LLC and Hartford Fire Insurance Co.

Please set it up for later today.

---

**From:** John Hughes [mailto:JHughes@gordonrees.com]

**Sent:** Monday, August 18, 2008 1:06 PM

**To:** Samantha Oryall; CBrennan@blwlawfirm.com; JCohen@freightlaw.net; mdaley@rallaw.com; Edward Joffe

**Cc:** las@llcllp.com; Elise Shibles; adonnelly@blwlawfirm.com

**Subject:** Re: Mason & Dixon Intermodal, Inc. v. Lapmaster International, LLC and Hartford Fire Insurance Co.

I am unable to get through; I am out of the office and my secretary is away.

Can we either do this later today, or if someone wants to try to set something up now, please let me know.

John

---

**From:** Samantha Oryall

**To:** John Hughes; 'Christopher Brennan' ; 'Jeffrey Cohen' ; 'mdaley@rallaw.com' ; 'ejoffe@strtrade.com'

**Cc:** 'las@llcllp.com' ; 'eshibles@strtrade.com' ; 'Amy Donnelly'

**Sent:** Fri Aug 15 16:16:00 2008

**Subject:** RE: Mason & Dixon Intermodal, Inc. v. Lapmaster International, LLC and Hartford Fire Insurance Co.

Date: August 18, 2008

Time: 10:00 Pacific Time

Dial-in No.: 888 435 4382

Passcode: 415 875 3122

*Samantha Oryall*  
Assistant to John F. Hughes  
Gordon & Rees LLP

8/20/2008

275 Battery St. Suite 2000  
San Francisco, CA 94111  
(415) 875-4134 Direct  
(415) 986-8054 Fax

---

**From:** John Hughes  
**Sent:** Friday, August 15, 2008 3:43 PM  
**To:** 'Christopher Brennan'; Jeffrey Cohen; mdaley@rallaw.com; ejoffe@strtrade.com  
**Cc:** las@llcllp.com; eshibles@strtrade.com; Samantha Oryall; Amy Donnelly  
**Subject:** RE: Mason & Dixon Intermodal, Inc. v. Lapmaster International, LLC and Hartford Fire Insurance Co.

i think we can set that up.

(Samantha, can you let everyone know what number to use for this conf call?)

thanks.

---

**From:** Christopher Brennan [mailto:CBrennan@blwlawfirm.com]  
**Sent:** Friday, August 15, 2008 3:38 PM  
**To:** Jeffrey Cohen; John Hughes; mdaley@rallaw.com; ejoffe@strtrade.com  
**Cc:** las@llcllp.com; eshibles@strtrade.com; Samantha Oryall; Amy Donnelly  
**Subject:** RE: Mason & Dixon Intermodal, Inc. v. Lapmaster International, LLC and Hartford Fire Insurance Co.

Does anyone have a conference call set up at their firm?

Christopher J. Brennan  
Bauman Loewe Witt & Maxwell, PLLC  
8765 E. Bell Road, Suite 204  
Scottsdale, Arizona 85260  
(480) 502-4664  
(480) 502-4774 (fax)

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**From:** Jeffrey Cohen [mailto:JCohen@freightlaw.net]  
**Sent:** Friday, August 15, 2008 2:32 PM  
**To:** John Hughes; Christopher Brennan; mdaley@rallaw.com; ejoffe@strtrade.com  
**Cc:** las@llcllp.com; eshibles@strtrade.com; Samantha Oryall; Amy Donnelly  
**Subject:** RE: Mason & Dixon Intermodal, Inc. v. Lapmaster International, LLC and Hartford Fire Insurance Co.

Let's have a call at 10:00 am pacific on Monday, even if it is just John and Chris – others of course welcome.

Jeff

Jeffrey D. Cohen  
Keenan Cohen & Howard PC  
One Pitcairn Place  
Suite 2400  
165 Township Line Road  
Jenkintown, PA 19046  
{Direct} 215-609-1104  
{Fax} 215-609-1117

8/20/2008



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**From:** John Hughes [mailto:JHughes@gordonrees.com]  
**Sent:** Friday, August 15, 2008 5:27 PM  
**To:** Jeffrey Cohen; Christopher Brennan; mdaley@rallaw.com; ejoffe@strtrade.com  
**Cc:** las@llcllp.com; eshibles@strtrade.com; Samantha Oryall; Amy Donnelly  
**Subject:** RE: Mason & Dixon Intermodal, Inc. v. Lapmaster International, LLC and Hartford Fire Insurance Co.

I, too, am only available on Monday (except between 11 am and 3 pm) next week.

---

**From:** Jeffrey Cohen [mailto:JCohen@freightlaw.net]  
**Sent:** Friday, August 15, 2008 2:23 PM  
**To:** Christopher Brennan; John Hughes; mdaley@rallaw.com; ejoffe@strtrade.com  
**Cc:** las@llcllp.com; eshibles@strtrade.com; Samantha Oryall; Amy Donnelly  
**Subject:** RE: Mason & Dixon Intermodal, Inc. v. Lapmaster International, LLC and Hartford Fire Insurance Co.

Counsel,

I will be in on Mon, Tues and Wed of next week. I will send my proposal early next week. I am available for a call from 10 am until 12 pm (Pacific) on Tues or Wed of next week. Please let me know if you all are available.

Jeff

Jeffrey D. Cohen  
Keenan Cohen & Howard PC  
One Pitcairn Place  
Suite 2400  
165 Township Line Road  
Jenkintown, PA 19046  
{Direct} 215-609-1104  
{Fax} 215-609-1117  
jcohen@freightlaw.net

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---

**From:** Christopher Brennan [mailto:CBrennan@blwlawfirm.com]  
**Sent:** Friday, August 15, 2008 5:07 PM  
**To:** Jeffrey Cohen; John Hughes; mdaley@rallaw.com; ejoffe@strtrade.com  
**Cc:** las@llcllp.com; eshibles@strtrade.com; Samantha Oryall; Amy Donnelly  
**Subject:** RE: Mason & Dixon Intermodal, Inc. v. Lapmaster International, LLC and Hartford Fire Insurance Co.

Counsel-

8/20/2008

Are we able to agree on the proposed discovery plan? I would like to avoid having to appear on Thursday, August 21, 2008, for the further CMC if possible.

Christopher J. Brennan  
Bauman Loewe Witt & Maxwell, PLLC  
8765 E. Bell Road, Suite 204  
Scottsdale, Arizona 85260  
(480) 502-4664  
(480) 502-4774 (fax)

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---

**From:** Jeffrey Cohen [mailto:JCohen@freightlaw.net]  
**Sent:** Monday, August 11, 2008 9:45 AM  
**To:** John Hughes; Christopher Brennan; mdaley@rallaw.com; ejoffe@strtrade.com  
**Cc:** las@llcllp.com; eshibles@strtrade.com; Samantha Oryall  
**Subject:** RE: Mason & Dixon Intermodal, Inc. v. Lapmaster International, LLC and Hartford Fire Insurance Co.

John,

This is a good start. We need to add/modify some items. I am available from 10 am until 12 pm (Pacific) tomorrow for a call.

Jeff

Jeffrey D. Cohen  
Keenan Cohen & Howard PC  
One Pitcairn Place  
Suite 2400  
165 Township Line Road  
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**From:** John Hughes [mailto:JHughes@gordonrees.com]  
**Sent:** Thursday, August 07, 2008 9:28 PM  
**To:** Jeffrey Cohen; cbrennan@blwlawfirm.com; mdaley@rallaw.com; ejoffe@strtrade.com  
**Cc:** las@llcllp.com; eshibles@strtrade.com; Samantha Oryall  
**Subject:** RE: Mason & Dixon Intermodal, Inc. v. Lapmaster International, LLC and Hartford Fire Insurance Co.

Dear Counsel,

I am writing to get the ball rolling on the submission of a discovery plan that we are supposed to exchange tomorrow. I have spoken with Hartford's atty, Chris Brennan, and we have come up with a general outline (see

8/20/2008

below) of what we feel we will need to do to address the issues that pertain to the anticipated motions for summary judgment.

I would suggest that everyone weigh in with their own plan, and that we then set up a conference call, perhaps next Monday or Tuesday, to discuss this in more detail. (Please get back to me with your availability.) Ideally, we could agree to many facts that are not in dispute, and thereby eliminate some of the fact gathering that we all need to do. Alternatively, we should discuss whether there are other ways of gathering the information without having to take a lot of depositions at this point.

I look forward to hearing back from each of you.

John

P.S. I assume all counsel are copied on this email. If anyone notices that someone is missing, please forward this email to them. Thanks.

#### **Proposed Discovery Plan (Lapmaster/Hartford)**

1. Take the deposition of the PMK for WEST on the following issues: (a) the arrangements for the transportation of the goods from Japan to Oakland; (b) the arrangements for the transportation of the goods from Oakland to Fremont; (c) all documents pertaining to (a) and (b); all communications with Lapmaster concerning this transaction.
2. Take the the deposition of the PMK for ITG on the following issues: (a) the arrangements for the transportation of the goods from Oakland to Fremont; (b) all documents pertaining to (a); (c) all communications between ITG and WEST concerning this transaction; (d) all communications between ITG and Mason Dixon concerning this transaction.
3. Take the the deposition of the PMK for Mason Dixon on the following issues: (a) all communications with ITG re the transportation of the goods from Oakland to Fremont; (b) the size, dimensions, and transportation requirements for the goods being delivered from Oakland to Fremont; (c) the relationship, if any, between Mason Dixon and the shippers/shipping company responsible for transporting the goods from Japan to Oakland.
4. Take the depositions of the Mason Dixon drivers on the following issues: (a) information provided at dispatch, including name of dispatcher, what told, and what documentation provided; (b) what steps taken to ensure that the load was properly and safely transported; and (c) what happened to cause the two losses.

---

San Francisco \* San Diego \* Los Angeles \* Sacramento \* Orange County \* Las Vegas \* Portland \* Seattle \* Houston \* Chicago \* Phoenix \* Dallas \*  
New York \* Long Island \* Newark \* Denver

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**GORDON & REES LLP**  
**<http://www.gordonrees.com>**

8/20/2008

Re: *Mason and Dixon Intermodal, Inc. v. Lapmaster International, LLC*  
 United States District Court – Northern District No. CV 08 01232 VRW

## PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is: Gordon & Rees LLP 275 Battery Street, Suite 2000, San Francisco, CA 94111. On August 21, 2008, I served the within documents:

**DECLARATION OF PETER J. TURCOTTE IN SUPPORT OF LAPMASTER INTERNATIONAL LLC'S OPPOSITION TO W.E.S.T. FORWARDING SERVICES' MOTION TO DISMISS OR IN THE ALTERNATIVE FOR SUMMARY JUDGMENT, AND TO ITG TRANSPORTATION SERVICES, INC.'S JOINDER IN SAME**

☒ by electronically serving the document(s) described above via United States District Court Electronic Case Filing website (CM/ECF notification system) on the recipients designated on the electronic service list that is located on the Pacer website and as set forth below.:

Attorneys for WEST Forwarding

Elise Shibles  
 Edward M. Joffe  
 Sandler Travis & Rosenberg  
**Email: eshibles@strtrade.com**  
**Email: ejoffe@strtrade.com**

Attorneys for Hartford Fire Ins. Co.

Christopher J. Brennan  
 Bauman Loewe Witt & Maxwell  
**Email: cbrennan@blwlawfirm.com**

Attorneys for ITG Transportation

Michael Joseph Daley  
 Ryan & Lifter  
**Email: mdaley@rallaw.com**

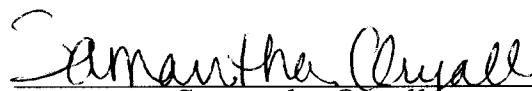
Attorneys for Plaintiff

Matthew S. Conant  
 Lori Ann Sebransky  
 Lombardi Loper & Conant  
**Email: msc@llcllp.com**  
**Email: las@llcllp.com**

Attorneys for Plaintiff

Paul D. Keenan  
 Jeffrey D. Cohen  
 Keenan Cohen & Howard  
**Email: jcohen@freightlaw.net**  
**Email: pkeen@freightlaw.net**

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on August 21, 2008, at San Francisco, California.

  
 Samantha Oryall

Gordon & Rees LLP  
 275 Battery Street, Suite 2000  
 San Francisco, CA 94111